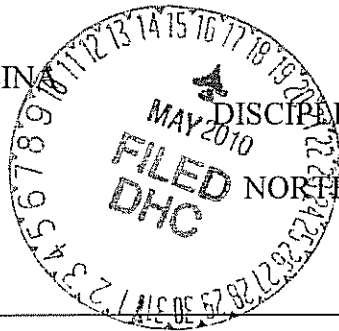


STATE OF NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
10 DHC 17

THE NORTH CAROLINA STATE BAR  
Plaintiff

v.

PHILLIP G. ROSE, ATTORNEY  
Defendant

ANSWER

NOW COMES the Defendant, Phillip G. Rose (Rose), through counsel, answering the Complaint filed herein by the Plaintiff:

1. The allegations in paragraphs 1 – 6 of the Plaintiff's Complaint are admitted.

2. As to the allegations in paragraph 7, it is denied that the HUD-1 for the Broadgait Brae transaction represented that \$50,990.29 was disbursed to the seller in net sales proceeds. No copy of the HUD-1 was attached to the complaint as Exhibit A and Rose is therefore unable to make any admissions about that document. The remaining allegations in paragraph 7 are hereby admitted and it is admitted that the HUD-1 for the Broadgait Brae transaction represented that \$50,930.29 was disbursed to the seller in net sales proceeds. In addition, it is admitted that the purchaser and seller were both aware of all terms of the transaction and that Rose drafted the HUD-1 at the request of the purchaser and seller, in an effort to help the seller avoid foreclosure, which was then imminent.

3. The allegations in paragraph 8 are admitted.

4. The allegations in paragraph 9 are admitted. It is further admitted that the buyer and seller previously agreed for the purchase price to be the amount of the payoff to Countrywide Homes.

5. The allegations in paragraphs 10 – 19 are admitted.

6. As to the allegations in paragraph 20(e), it is denied that the HUD-1 reflected that \$50,990.29 was to be disbursed to the seller, but it is admitted that the HUD-1 for the Broadgait Brae transaction represented that \$50,930.29 was disbursed to the seller in net sales proceeds. It is admitted that Rose was aware of the facts in paragraphs 20(a) – (d), did not disclose them to

the lender and, for some of the facts, prepared documents inconsistent with these facts. Any remaining allegations are denied.

7. The un-numbered allegations following paragraph 20 of the Complaint set out legal conclusions to which no Answer is required.

## SECOND CLAIM FOR RELIEF

8. As to the allegations in Paragraph 21, Rose incorporates paragraphs 1 – 7 of his Answer as if fully set out herein.

9. The allegations in paragraphs 22 -25 are admitted, except that no copy of the HUD-1 was attached to the complaint as Exhibit B and Rose is therefore unable to make any admissions about that document.

10. The allegations in paragraph 26 are admitted upon information and belief. It is further admitted that Rose or his office provided a copy of the check with the seller's name listed as the remitter to the lender before the lender authorized disbursement and recording for the transaction. Rose does not recall whether the check was brought to the closing conference or later and does not recall noticing that the seller was the remitter.

11. The allegations in paragraph 27 are denied. Rose was provided a copy of an agreement to sell real estate between the parties indicating a purchase price of \$118,000. This \$118,000 is the same amount listed on the HUD-1 settlement statement Rose prepared and signed for the transaction. Rose had no knowledge if the parties had agreed to any different sales price.

12. As to the allegations in paragraph 28, it is admitted that the HUD-1 provided to the lender inaccurately stated that the buyer brought \$11,800 to closing. Additionally, Rose incorporates his response in paragraph 10 above that this check was provided to the lender before the lender authorized disbursement and recording. The remaining allegations are denied.

13. As to the allegations in paragraph 29, it is admitted that the HUD-1 provided to the lender inaccurately stated that the buyer brought \$11,800 to closing. Additionally, Rose incorporates his response in paragraph 10 above that this check was provided to the lender before the lender authorized disbursement and recording. The remaining allegations are denied.

14. The allegations in paragraph 30 are admitted.

15. The allegations in paragraph 31(a) are denied. Additionally, Rose incorporates his response in paragraph 11 above that the sales price he listed on the HUD-1 was consistent with the sales agreement he was provided and that he had no knowledge to the contrary.

16. The allegations in paragraph 31(b) are denied. Additionally, Rose incorporates his response in paragraph 10 above that this check was provided to the lender before the lender authorized disbursement and recording.

17. The allegations in paragraph 31(c) are denied. Rose issued check # 4602 on February 2, 2005 from his trust account to the seller in the amount of \$20, 619.37, the same amount listed on the HUD-1.

18. As to the allegations in paragraph 32, it is admitted that Rose signed the HUD-1, which did not contain an accurate statement of all of the receipts and disbursements he made in the transaction. It is further admitted that any misstatements about these receipts and disbursements were inadvertent and not done knowingly and intentionally. Except as admitted herein, the allegations are denied.

19. As to the allegations in paragraph 33, Rose admits that the HUD-1 was not accurate as to the amount of money the buyer/borrower brought to the transaction. Except as admitted herein, the allegations are denied.

20. The un-numbered allegations following paragraph 33 of the Complaint set out legal conclusions to which no Answer is required.

### THIRD CLAIM FOR RELIEF

21. Rose incorporates paragraphs 1 – 20 of his Answer as if fully set out herein in response to the allegations in paragraph 34.

22. The allegations in paragraphs 35 – 39 are admitted. It is further admitted that the Offers to Purchase and Contracts provided to Rose for these two transactions state that the sales price for Lot 89 was \$146,000 and for Lot 91 was \$160,000, consistent with what Rose listed on the HUD-1s he prepared and signed for these transactions.

23. The allegations in paragraph 40 are denied. It is further admitted that Rose or his office was provided with checks for the appropriate amounts listing the buyer as the remitter of those checks.

24. The allegations in paragraph 41 are admitted. It is further admitted that the lender approved the transaction before any funds were disbursed.

25. The allegations in paragraph 42 are denied.

26. The allegations in paragraphs 43 – 44 are admitted. Rose believed that the HUD-1s accurately recited the receipt and disbursement of funds in the transactions.

27. The allegations in paragraph 45 are denied.

28. The allegations in paragraph 46 are admitted.

29. The allegations in paragraph 47 are denied.

30. The un-numbered allegations following paragraph 47 of the Complaint set out legal conclusions to which no Answer is required.

#### FOURTH CLAIM FOR RELIEF

31. Rose incorporates paragraphs 1 – 30 of his Answer as if fully set out herein in response to the allegations in Paragraph 48.

32. The allegations in paragraphs 49 – 51 are admitted.

33. The allegations in paragraph 52 are admitted. It is further admitted that the Offer to Purchase and Contract provided to Rose for the transaction states that the sales price for Lot 90 was \$160,000.

34. The allegations in paragraph 53 are admitted. It is further admitted that the Offer to Purchase and Contract provided to Rose for the transaction states that the sales price for Lot 92 was \$160,000.

35. The allegations in paragraph 54 are denied. It is admitted that Rose or his office was provided with checks for the appropriate amounts listing the buyer as the remitter for those checks.

36. The allegations in paragraph 55 are admitted. It is further admitted that the lender approved the transaction before any funds were disbursed.

37. The allegations in paragraph 56 are denied.

38. The allegations in paragraph 57 are admitted. Rose believed that the HUD-1s accurately recited the receipt and disbursement of funds in the transactions.

39. The allegations in paragraph 58 are admitted.

40. The allegations in paragraph 59 are denied.

41. The allegations in paragraph 60 are admitted.

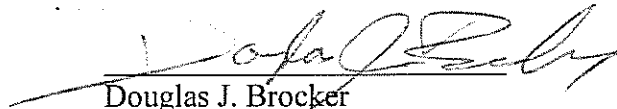
42. The allegations in paragraph 61 are denied.

43. The un-numbered allegations following paragraph 61 of the Complaint set out legal conclusions to which no Answer is required.

WHEREFORE, the Defendant respectfully requests that the Third and Fourth Claims for Relief be dismissed with prejudice and that a hearing be held as to the First and Second Claims for Relief.

This the 17<sup>th</sup> day of May, 2010.

THE BROCKER LAW FIRM  
Attorneys for the Defendant

A handwritten signature in black ink, appearing to read "Douglas J. Brocker", is written over a horizontal line.

Douglas J. Brocker  
State Bar # 22802  
Carolyn Bakewell, Of Counsel  
State Bar # 10792  
5540 Centerview Drive  
Raleigh, N.C.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Answer was served upon the Plaintiff herein by depositing a copy thereof into the U.S. Mail to the Plaintiff's attorney of record:

Mr. William N. Farrell  
Deputy Counsel  
The N.C. State Bar  
P.O. Box 25908  
Raleigh, N.C. 27611

This the 17 day of May, 2010.

  
Douglas J. Brocker